flict arises not so much from a direct conflict in the holdings of the cases, as from a failure to make a distinction between collateral security taken on the property conditionally sold and that taken on other property of the buyer. Further, no distinction has been drawn between collateral security afforded by a third person and that afforded by property of the buyer.

RESTRAINT OF TRADE—SHERMAN ANTI-TRUST ACT—The International Harvester Company was a consolidation of five companies, which collectively produced about eighty-five *per centum* of the harvestering machinery sold in this country. The companies previously had been prosperous and keen competitors. The combination was effected by making one of the companies, of which the Harvester Company owned all the stock, with changed name, the exclusive selling agent for all the products of the several plants. No over capitalization was shown and the methods of conducting the business were in general fair to competitors. The Harvester Company purchased all of the stock of another large harvester company, permitting it, however, to continue doing business and advertising as an independent and competing firm. The government sought to dissolve the combination. *Held*, under §§ 1 and 2 of the Sherman Anti-Trust Act the International Harvester Company is organized to eliminate competition; it it *ab initio* a combination in restraint of interstate commerce; and it is an attempt to create a monopoly in harvesting machinery, and although the restraint and monopoly had not been attempted to any harmful extent it is potential and is prohibited by the act. *U. S.* v. *International Harvester Co.*, 214 Fed. 987. See NOTES, p. 140.

SPECIFIC PERFORMANCE—RELIEF FROM DECREE—EFFECT OF VENDEE'S FAILURE TO PAY.—The defendant contracted to sell the plaintiff certain lands. Afterwards, upon the defendant's refusal to convey the property, the plaintiff was granted a decree directing a conveyance on the payment of the purchase money. Then, although the defendant stood ready to convey in accordance with the decree, the plaintiff paid nothing; whereupon the defendant made motion that the decree be rescinded to remove the cloud resting upon the title to the property. *Held*, the plaintiff is entitled to the relief asked. *Rosenstein* v. *Burr* (N. J. Ch.), 90 Atl. 1037.

Suits of this nature, at least where the vendee was plaintiff in the suit for specific performance, are of infrequent occurrence; partly because performance would not be sought where there was an inability to pay the purchase price, and because of the rule in some jurisdictions requiring actual payment of it to the court before granting the vendee's suit. *Jones* v. *Alley*, 4 Greene (Ia.) 181. A suit for the rescission of the decree has never been previously brought before the American courts. See *Rosenstein* v. *Burr*, *supra*. But it has been held that where the vendee, after obtaining a decree of specific performance, fails to take title to the property in accordance with the decree; either

the property may be sold under the order of court and any deficiency between the amount realized and the contract price, be paid by the vendee; or a certain time for payment fixed, after which the vendee's right to specific performance will be barred. *Clark* v. *Hall,* 7 Paige (N. Y. Ch.) 382. In American practice it seems to have been the custom, on the failure of the vendee to take advantage of the decree, to grant the vendor the former remedy, whether the original decree was sought by the vendee or the vendor. *Burnap* v. *Sidberry,* 108 N. C. 307, 12 S. E. 1002; *Corbus* v. *Teed,* 69 Ill. 205. The decision of the principal case is based on English authority. In England the doctrine prevails that on the failure of the vendee to avail himself of a decree of specific performance, the vendor may rescind the contract. *Foligno* v. *Martin,* 16 Beav. 586, 22 L. J. Ch. 502; *Sweet* v. *Meredith,* 4 Giff. 207, 32 L. J. Ch. 147; *Simpson* v. *Terry,* 34 Beav. 422. The vendor should not be held to the contract and compelled to take proceedings for obtaining the purchase money which may be ultimately unavailing. *Foligno* v. *Martin, supra.* The earlier rule was, that the contract could be rescinded and a recovery be had for damages which the plaintiff had sustained from the breach of the contract. *Sweet* v. *Meredith, supra.* But it is now held inconsistent for the court to rescind such a contract and at the same time give damages for its breach. *Henty* v. *Schroder,* 12 C. D. 666.

STATUTES—CONSTRUCTION—WHAT CONSTITUTES CONVICTION.—By a statute the crime of prison breach was defined an escape, by force and violence, of one confined to jail on conviction of a criminal offense. Pending the determination of a writ of error which resulted in a reversal of the judgment, the defendant, convicted in the lower court, escaped by force. *Held,* there is no conviction within the meaning of the statute. *State* v. *Fishner* (W. Va.), 81 S. E. 1046.

There is conflict as to whether there is a conviction on the finding of a verdict of guilty by the jury before judgment is pronounced by the court. Where the governor is allowed the power of pardon "after conviction," the finding of a verdict of guilty by the jury is held a conviction. *Blair* v. *State,* 25 Gratt. (Va.) 850; *Com.* v. *Lockwood,* 109 Mass. 323, 12 Am. Rep. 699. But where such a construction would operate against the accused, as in statutes regulating the qualifications of witnesses, conviction is given a narrow and technical meaning and implies a judgment by the court. *Faunce* v. *People,* 51 Ill. 311. The same rule applies to statutes regulating the credibility of witnesses. *Com.* v. *Gorham,* 99 Mass. 420. Likewise where a statute imposes the cost of the suit upon the convict. *York County* v. *Dalhousen,* 45 Pa. St. 372. Also where a statute effects the forfeiture of a liquor license upon a conviction of the holder. *Com.* v. *Kiley,* 150 Mass. 325, 23 N. E. 55. However it has been held as to the forfeiture of a liquor license bond that the finding of a verdict of guilty by the jury is a conviction. *Quintard* v. *Knoedler,* 53 Conn. 485, 2 Atl. 752. There seems to be no case going so far in applying this strict rule of construction as the principal case. And as penal statutes should receive a strict construc-